Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-998

RODNEY A. LOGAL,

Petitioner,

vs.

WILLIAM C. CRUSE, JERRY W. COOK, BILLY D. MARTIN and RANDALL CZEKAJ,

Respondents.

BRIEF OF BILLY D. MARTIN IN OPPOSITION TO PETITION FOR CERTIORARI

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ARGUMENT

I.

Petitioner requests this court to review two questions set forth on page 4 of the petition. Respondent, Martin, responds to these questions as follows:

1) Petitioner argues that the due process protection afforded by the 5th and 14th Amendments to the Constitution (Pet. 5) necessitates *personal* notice to a party and that notice to his attorney, pursuant to Ind.

R.T.P. 5 (A37-38) was not sufficient protection as against the sanctions of fees and dismissal imposed by the trial court, pursuant to Ind. R.T.P. 37(B) (4), (Pet. 5-6) for thwarting the discovery process.

Due process requires an opportunity to be heard upon such notice and proceedings as are adequate to safeguard the protection afforded by the Constitution. Notice was given petitioner by serving his attorney as required by Ind. R.T.P. 5 (A37-38). A hearing was provided petitioner by the trial court prior to the imposition of sanctions. Petitioner is bound by the acts of his lawyer-agent and is considered to have notice of all facts and notices chargeable to the attorney. Respondents diligently prosecuted their portion of the action, complied with the rules, and should not bear the burden nor suffer the consequences of the acts of petitioner or his attorney. Petitioner's remedy, if any exists, is against his attorney for malpractice.

Link v. Wabash Railroad Co., (1962) 370 U.S. 626, 8 L. Ed. 2d 734, 82 S. Ct. 1386;
Hammond Packing Co. v. State of Arkansas, (1909) 212 U.S. 322, 53 L. Ed. 530;
Hovey v. Elliott, (1897) 167 U.S. 409, 17 S. Ct. 481, 42 L. Ed. 215.

Petitioner, on page 12 of his petition, maintains that two points not present in the *Link* case justify a review by this court. First, the trial court entered a monetary award against petitioner. This contention has no merit as such action is authorized by both federal and state procedure. See F.R.C.P. 37(d) and Ind. R.T.P. 37 (B) (2)—(Pet. 5). It has been approved by the Indiana courts. *Clark County State Bank v. Bennett* (1975), 336 N.E. 2d 663 (668), ... Ind. App. .....; *Brutus v. Wright* (1965), 324 N.E. 2d 165 (171), ... Ind. App. ..... .

Secondly, petitioner claims that a lack of *personal* notice coupled with the trial court's denial of his petition to reinstate his cause of action constitutes a loss of property without due process and justifies review by this court. This contention also has no merit. In the *Link* case, there was no notice given prior to entering the sanction of dismissal. In our case, notice was given to petitioner's attorney as required by the rules. Further, petitioner's request for reinstatement of his cause was filed with the trial court after an appeal had been perfected and the trial court no longer had jurisdiction to act. (A30) Even so, in the interest of fairness, the Indiana Supreme Court considered the petition to reinstate and rejected it. (A31)

2) Petitioner argues that the constitutional rights guaranteed him by the 5th and 14th Amendments to the Constitution of the United States were violated by the dismissal of his action and the subsequent refusal to reinstate the action.

Petitioner had perfected an appeal of his case prior to the filing of the petition to reinstate with the trial court. The trial court was without jurisdiction to act on the request for reinstatement. (A30) The Indiana Supreme Court, in the interest of fairness, considered the petition for reinstatement but denied same. (A37-38) No facts or circumstances are shown which would warrant a holding by this court that the Indiana Supreme Court's decision denying petitioner's 60 (B) motion for reinstatement was such an abuse of its discretion as to constitute a denial of petitioner's constitutional rights. See *Link v. Wabash, supra*, page 635.

II.

For the reasons set forth above, respondent, Billy D. Martin, requests that the petition for writ of certiorari be denied.

Respectfully submitted,

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